

Rule 29. Direct Placement Adoption**29.01 Notice of Motion and Motion for a Preadoptive Custody Order**

In a direct placement adoption, whether involving an emergency or nonemergency situation, the petitioner shall file with the court and serve a notice of motion and motion for a preadoptive custody order upon:

- (a) the biological mother;
- (b) the biological father if his consent is required;
- (c) any parent whose consent is required; and
- (d) the Indian tribe, if the child is an Indian child.

(Amended effective January 1, 2007.)

29.02 Timing

A notice of motion and motion for a preadoptive custody order may be filed up to sixty (60) days before the adoptive placement is to be made and may be filed prior to the birth of the baby.

(Amended effective January 1, 2007.)

29.03 Content

Subdivision 1. Nonemergency Direct Placement. In a nonemergency situation, a notice of motion and motion for a preadoptive custody order in a direct placement adoption shall be in writing and shall contain or have attached:

- (a) a statement that the biological parents have:
 - (1) provided the social and medical history to the prospective adoptive parent using the form prescribed by the Commissioner of Human Services;
 - (2) received a written statement of their legal rights and responsibilities prepared by the Department of Human Services; and
 - (3) been notified of their right to receive counseling;
- (b) the name of the agency chosen by the adoptive parent to supervise the adoptive placement and complete the post-placement assessment;
- (c) affidavits from the biological parents stating their support of the motion or, if there is no affidavit from the biological father, an affidavit from the biological mother that describes her good faith efforts, or efforts made on her behalf, to identify and locate the biological father for purposes of securing his consent. In the following circumstances the biological mother may instead submit an affidavit stating on which of the following grounds she is exempt from making efforts to identify and locate the father:
 - (1) the child was conceived as the result of incest or rape;
 - (2) efforts to locate the biological father by the affiant or anyone acting on the affiant's behalf could reasonably result in physical harm to the biological mother or the child; or
 - (3) efforts to locate the biological father by the affiant or anyone acting on the affiant's behalf could reasonably result in severe emotional distress of the biological mother or child;

- (d) a statement that the prospective adoptive parent meets the residence requirements;
- (e) an affidavit of intent to remain a resident of the state for at least three (3) months after the child is placed in the prospective adoptive home;
- (f) a notice of intent to file an adoption petition;
- (g) the adoption study report required pursuant to Rule 37;
- (h) an itemized statement of expenses that have been paid and an estimate of expenses that will be paid by the prospective adoptive parents to the biological parents, any agency, attorney, or other party in connection with the prospective adoption; and
- (i) the name of counsel for each party, if any.

Subd. 2. Emergency Direct Placement. In an emergency situation, a notice of motion and motion for a preadoptive custody order in a direct placement adoption shall be in writing and shall contain or have attached:

(a) affidavits from the prospective adoptive parents and biological parents stating that an emergency order is needed because of the unexpected premature birth of the child or other extraordinary circumstances which prevented the completion of the requirements under subdivision 1;

(b) affidavits from the biological parents stating their support of the motion or, if there is no affidavit from the biological father, an affidavit from the biological mother that describes her good faith efforts, or efforts made on her behalf, to identify and locate the biological father for purposes of securing his consent. In the following circumstances the biological mother may instead submit an affidavit stating on which of the following grounds she is exempt from making efforts to identify and locate the father:

- (1) the child was conceived as the result of incest or rape;
- (2) efforts to locate the father by the affiant or anyone acting on the affiant's behalf could reasonably result in physical harm to the biological mother or child; or
- (3) efforts to locate the father by the affiant or anyone acting on the affiant's behalf could reasonably result in severe emotional distress of the biological mother or child;

(c) a statement that the biological parents:

(1) have received the written statement of their legal rights and responsibilities prepared by the Department of Human Services; and

(2) have been notified of their right to receive counseling; and

(d) either:

- (1) the adoption study report pursuant to Rule 37; or
- (2) affidavits stating whether the prospective adoptive parents or any person residing in the household have been convicted of a crime.

(Amended effective January 1, 2007; amended effective July 1, 2015.)

29.04 Decision and Order

Subdivision 1. Nonemergency Direct Placement. In a nonemergency situation, the court shall decide a motion for a preadoptive custody order within fifteen (15) days of the filing of the motion or by the anticipated placement date stated in the motion, whichever is earlier.

Subd. 2. Emergency Direct Placement.

(a) **Expedited Emergency Order.** An order granting or denying a motion for an emergency preadoptive custody order shall be issued within twenty-four (24) hours of the time it is filed. Any district court judge may decide a motion for emergency preadoptive custody. An order granting the motion shall direct that an adoption study be commenced immediately, if that has not already occurred, and that the agency conducting the study shall supervise the emergency placement.

(b) **Expiration of Emergency Order.** A court may issue an emergency order granting preadoptive custody of a child to a prospective adoptive parent for up to fourteen (14) days. An emergency order under this Rule expires fourteen (14) days after it is issued. If the requirements for nonemergency direct placement under this Rule are completed and a preadoptive custody motion is filed on or before the expiration of the emergency order, placement may continue until the court decides the motion. The court shall decide the preadoptive custody motion within seven (7) days of filing.

(Amended effective January 1, 2007; amended effective August 1, 2009.)